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Insurance

Insurance; Insurance Information and Privacy Protection Act

Insurance Code §§791-791.26 (repealed and new).

AB 3333 (McAlister); STATS 1980, Ch 1214

Support: Association of California Life Insurance Companies; Department of Consumer Affairs; Department of Finance; Department of Insurance

In an effort to achieve a balance between the need for information by those conducting the business of insurance¹ and the need of the public for fairness in insurance information practices,² Chapter 1214 enacts the Insurance Information and Privacy Protection Act.³ The Act is based upon the National Association of Insurance Commissioners' Insurance Information and Privacy Protection Model Act,⁴ as well as the recommendations of the Federal Privacy Protection Study Commission.⁵ Chapter 1214 establishes procedures for individuals⁶ to gain access to and correct their insurance records,⁷ as well as the standards for the collection, use, and disclosure of information by insurance companies.⁸ Furthermore, the legislation assists insurance applicants⁹ and policyholders¹⁰ in assuring the accuracy of their information records by allowing them to obtain the specific reasons for any adverse underwrit-

1. See CAL. INS. CODE §791.02(y).

2. See *id.* §791.

3. See *id.* §§791-791.26.

4. See NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS PRIVACY PROTECTION TASK FORCE, REPORT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS PRIVACY PROTECTION TASK FORCE, 1 PROCEEDINGS OF THE NAIC 319-35 (1980). See generally NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS PRIVACY PROTECTION TASK FORCE, A DESCRIPTION AND EXPLANATION OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS INSURANCE INFORMATION AND PRIVACY PROTECTION MODEL ACT, 1 PROCEEDINGS OF THE NAIC 336-52 (1980) [hereinafter cited as *NAIC Description*].

5. See PRIVACY PROTECTION STUDY COMMISSION, PERSONAL PRIVACY IN AN INFORMATION SOCIETY (July 1977) as analyzed in AMERICAN ENTERPRISE INSTITUTE, Privacy Protection Proposals 39-41 (1979). See generally 5 U.S.C. §§552 (1976) (Freedom of Information Act); 552a (Privacy Act of 1974); 15 U.S.C. §1681 (1976) (Fair Credit Reporting Act); Privacy Act of 1974, Pub. L. No. 93-579, §5, 88 Stat. 1896 (establishing Privacy Protection Study Commission); CAL. CONST. art. I, §1; CAL. CIV. CODE §§1786-1786.56 (Investigative Consumer Reporting Agencies Act); 1798-1798.76 (Information Practices Act of 1977).

6. See CAL. INS. CODE §791.02(h) (definition of individual).

7. See *id.* §§791.08, 791.09.

8. See *id.* §§791.03-791.07, 791.13.

9. See *id.* §791.02(d) (definition of applicant).

10. See *id.* §791.02(s) (definition of policyholder).

ing decision.¹¹ Chapter 1214 also provides for a general system of immunity, enforcement, remedies, and penalties.¹²

Collection of Personal Information

Chapter 1214 requires an insurance institution¹³ or agent¹⁴ to provide timely written notice regarding the collection of personal information¹⁵ to all applicants or policyholders in connection with an insurance application, a policy renewal, a policy reinstatement, or a request for a change in benefits.¹⁶ In the case of an application for insurance, the notice must be given either at the time the collection of the information is initiated if personal information is collected from a person¹⁷ other than the applicant,¹⁸ or at the time of the delivery of the policy when personal information is collected from the applicant or from public records.¹⁹ In either case, notice must be given within three business days of the binding of a property or casualty insurance coverage.²⁰ In the case of a policy renewal, except when notice has been given within the previous two years or information is collected only from public records or the policyholder, Chapter 1214 specifies that notice be given on the policy renewal date or date of renewal confirmation.²¹ Notice also must be given at the time a request for a policy reinstatement or change in benefits is received by the insurance institution unless personal information is collected from only the policyholder or notice has been given within the previous two years.²²

The notice required by Chapter 1214 must state whether personal information may be collected from persons other than the individual to be covered,²³ the types of information that may be collected, and the types of sources and investigative techniques that may be used.²⁴ The notice must also identify the types of persons who may receive personal information without prior authorization,²⁵ the types of personal information that may be disclosed without prior authorization,²⁶ and the

11. *See id.* §§791.10-791.12.

12. *See id.* §§791.14-791.22.

13. *See id.* §791.02(j) (definition of insurance institution). *See generally id.* §791.01.

14. *See id.* §791.02(c) (definition of agent). *See generally id.* §791.01.

15. *See id.* §791.02(r) (definition of personal information).

16. *See id.* §791.04(a), (b).

17. *See id.* §791.02(q) (definition of person).

18. *See id.* §791.04(a)(1)(B).

19. *See id.* §791.04(a)(1)(A).

20. *See id.* §791.04(a)(4).

21. *See id.* §791.04(a)(2).

22. *See id.* §791.04(a)(3).

23. *See id.* §791.04(b)(1).

24. *See id.* §791.04(b)(2).

25. *See id.* §791.04(b)(3).

26. *See id.* §791.04(b)(4). *See generally id.* §791.13.

fact that information obtained from a report prepared by an insurance-support organization²⁷ may be retained by that organization and disclosed to other persons.²⁸ Moreover, the notice must state that a right of access, correction, and amendment exists with respect to the personal information collected²⁹ and that, upon request, any individual proposed for coverage is entitled to (1) information describing the procedures for gaining access to recorded personal information for making corrections, deletions, or filing a supplementary paper,³⁰ and (2) a description of the circumstances under which personal information may be disclosed without prior authorization.³¹

Chapter 1214 also requires an insurance institution or agent to specify clearly those items of information to be collected from an individual in connection with an insurance transaction that are desired *solely* for marketing, research, or other purposes not directly related to the insurance transaction.³² An individual thus will be able to distinguish the information required for consideration of an application or claim from information merely related to the insurer's business or administration.³³

Chapter 1214 provides that no insurance institution, agent, or support organization may ask, require, or induce an individual, in connection with an insurance transaction, to sign any form or statement authorizing the disclosure of personal or privileged information³⁴ unless the form or statement satisfies the following conditions: (1) the form must be written in plain language and clearly be separate from any associated application or claim-form language;³⁵ (2) the form must specify the types of persons authorized to disclose the information, the nature of the information to be disclosed, the types of persons who are authorized to receive the disclosure, and the purposes for which the information is collected;³⁶ (3) the form must be dated and must specify the length of time for which it is valid;³⁷ and (4) the form must advise the individual, or the person authorized to act on behalf of the individual, of the right to receive a copy of the authorization

27. *See id.* §791.02(k) (definition of insurance-support organization). *See generally id.* §791.01.

28. *See id.* §791.04(b)(6).

29. *See id.* §791.04(b)(5).

30. *See id.* §791.04(b)(7)(A). *See generally id.* §791.09(c) (description of supplementary paper).

31. *See id.* §791.04(b)(7)(B).

32. *See id.* §791.05. *See generally id.* §791.02(l) (definition of insurance transaction).

33. *See NAIC Description, supra* note 4, at 336, 341.

34. *See CAL. INS. CODE* §791.02(u) (definition of privileged information).

35. *See id.* §791.06(a), (i).

36. *See id.* §791.06(c), (d), (e), (f). *See generally NAIC Description, supra* note 4, at 340-42.

37. *See CAL. INS. CODE* §791.06(b), (g).

form.³⁸ Chapter 1214, however, does not require an authorization for the receipt of privileged or personal information about an individual.³⁹

In furtherance of the express legislative purpose of Chapter 1214 to promote fairness in insurance practices,⁴⁰ the Act limits the use of pretext interviews.⁴¹ Chapter 1214 prohibits pretext interviews except when undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person to whom the information relates and in cases where a reasonable basis exists for suspecting fraud, material misrepresentation, or material nondisclosure in the filing of the claim.⁴²

A further outgrowth of the legislature's policy of balancing the need for information in the insurance business with the public's need for protection against intrusiveness and unlimited disclosure of personal information,⁴³ is the restriction on investigative consumer reports.⁴⁴ Chapter 1214 allows these reports to be prepared or requested only if the insurance institution or agent informs the individual being investigated of the right to request a personal interview in connection with the preparation of the investigative consumer report⁴⁵ and of the right to receive a copy of the report if no interview is in fact conducted.⁴⁶ Moreover, if a personal interview is requested, the insurance institution or agent must either (1) institute reasonable procedures to conduct the interview⁴⁷ or (2) inform the insurance-support organization preparing the investigative consumer report of the request so that the support organization may institute reasonable procedures to conduct the interview.⁴⁸

Prior to the enactment of Chapter 1214, it appears to have been a

38. See *id.* §791.06(h).

39. See *id.* §791.06(j).

40. See *id.* §791.

41. See *id.* §§791, 791.03; *NAIC Description*, *supra* note 4, at 340. See generally CAL. INS. CODE §791.02(t) (definition of pretext interview), (t)(1) (information obtained by individuals pretending to be someone they are not), (t)(2) (information obtained by individuals pretending to represent someone they do not), (t)(3) (information obtained by misrepresenting the true purpose of the interview), (t)(4) (individuals refuse to identify themselves upon request).

42. See CAL. INS. CODE §791.03.

43. See *id.* §791.

44. Investigative consumer reports are defined as reports containing information about a person's character, reputation, personal characteristics or mode of living that have been obtained through personal interviews with the person's friends, associates, neighbors, or other persons who may have such information. Compare CAL. INS. CODE §791.02(e) with *id.* §791.02(m). For the restriction on these reports, see *id.* §791.07. See generally *NAIC Description*, *supra* note 4, at 342-43.

45. See CAL. INS. CODE §791.07(a)(1).

46. See *id.* §§791.07(a)(2), 791.08.

47. See *id.* §791.07(b).

48. See *id.* §791.07(c).

common practice, particularly of automobile insurers,⁴⁹ to ask for information from prospective insureds regarding a previous insurer's refusal to insure or to insure at other than standard rates.⁵⁰ The insurer would then use this information as a basis for the decision of approving coverage or refusing the application.⁵¹ In an apparent attempt to protect the individual from being refused insurance on the basis of incomplete or inaccurate information,⁵² Chapter 1214 provides that no insurance institution, agent, or support organization may ask an individual about any previous adverse underwriting decisions⁵³ or about any previous insurance coverage obtained through a residual market mechanism⁵⁴ without requesting the reasons for the adverse decision or the reasons for using the residual market mechanism.⁵⁵

Applicant's or Policyholder's Right of Access and Correction

Existing law generally does not give the public a right to see and verify recorded personal information held by insurance institutions, agents, and support organizations.⁵⁶ Only an insurance-support organization has the obligation, upon request, to inform individuals of the nature and substance of information contained in consumer reports.⁵⁷ Moreover, prior to the enactment of Chapter 1214, medical information held by the insurer did not have to be disclosed to the concerned individual in any form.⁵⁸

Chapter 1214 provides that any individual may submit a written request to an insurance institution, agent, or support organization for recorded personal information about the individual, so long as the individual supplies proper identification and reasonably describes the information requested.⁵⁹ In addition, the insurance institution, agent, or support organization must be reasonably able to locate and retrieve the information.⁶⁰ The insurance institution, agent, or support organization must reply within 30 business days from the date the request is

49. See *NAIC Description*, *supra* note 4, at 348.

50. See *NAIC Description*, *supra* note 4, at 348.

51. See *NAIC Description*, *supra* note 4, at 348.

52. See *NAIC Description*, *supra* note 4, at 348.

53. See CAL. INS. CODE §791.02(a) (definition of adverse underwriting decision).

54. See *id.* §791.02(v) (definition of residual market mechanism). Plans under this definition attempt to provide insurance for applicants who are entitled to insurance in good faith but are unable to procure it through ordinary methods. See *generally id.* §11620.

55. See *id.* §791.11.

56. See 15 U.S.C. §§1681a(f), 1681g (1976). See also CAL. CIV. CODE §1786.24 (investigative consumer reporting agency has obligation to allow public to see reports).

57. See 15 U.S.C. §§1681a(f), 1681g (1976). See *generally id.* §1681a(d); CAL. INS. CODE §791.02(e) (definition of consumer report).

58. See 15 U.S.C. §1681g(a)(1) (1976).

59. See CAL. INS. CODE §791.08(a).

60. See *id.*

received,⁶¹ and also must do the following: (1) inform the individual of the nature and substance of the recorded personal information;⁶² (2) permit the individual either to see and copy the recorded information personally or to receive a copy of the recorded information or an accurate translation of coded information by mail;⁶³ (3) disclose the identities, if recorded, of those persons who have received the personal information within the previous two years and, if the identities are not recorded, the names of persons or organizations who normally may receive an individual's personal information record;⁶⁴ and (4) provide a summary of the procedures for requesting the correction, amendment, or deletion of recorded personal information.⁶⁵ Furthermore, if the recorded personal information was received from an institutional source, the insurance institution, agent, or support organization must identify that institutional source.⁶⁶

The insurance institution, agent, or support organization, however, may prefer not to disclose medical record information⁶⁷ supplied by a medical care institution⁶⁸ or a medical professional⁶⁹ directly to the individual and may instead, upon notice to the individual, supply this information to a medical professional designated by the individual and licensed to provide medical care with respect to the condition discussed in the information.⁷⁰ In addition, all of the obligations imposed by Chapter 1214 on one insurance institution or agent with respect to providing the individual access to recorded personal information, may be satisfied by another insurance institution or agent that is authorized to act on the first party's behalf.⁷¹ A reasonable fee may be charged to cover the cost incurred in providing the recorded personal information to the individual.⁷²

Prior to the enactment of Chapter 1214, an insurance agency apparently did not have an obligation to change a record concerning an individual merely because of that individual's unsubstantiated objection to its accuracy.⁷³ Chapter 1214 establishes a statutory right on the part of

61. *See id.*

62. *See id.* §791.08(a)(1).

63. *See id.* §791.08(a)(2).

64. *See id.* §791.08(a)(3).

65. *See id.* §791.08(a)(4).

66. *See id.* §791.08(b).

67. *See id.* §791.02(p) (definition of medical record information).

68. *See id.* §791.02(n) (definition of medical care institution).

69. *See id.* §791.02(o) (definition of medical professional).

70. *See id.* §791.08(c).

71. *See id.* §791.08(e).

72. *See id.* §791.08(d). *But see id.* §791.10. *See generally NAIC Description, supra* note 4, at 344-45.

73. *See NAIC Description, supra* note 4, at 345-46.

the individual to request a correction, amendment, or deletion of recorded personal information.⁷⁴ Within 30 days of receiving a request to correct, amend, or delete any recorded personal information, the insurance institution, agent, or support organization either must make the requested change or notify the individual that the requested change will not be made and give the reason for the refusal.⁷⁵ Also, the insurance institution, agent, or support organization, upon refusal to make a requested change, must inform the requesting individual of his or her right to file a supplementary paper giving a concise statement of what the individual thinks is the correct, relevant, or fair information and the reasons why the individual disagrees with the refusal to correct, amend, or delete.⁷⁶ The insurance institution, agent, or support organization must file the supplementary statement with the disputed personal information⁷⁷ and in any subsequent disclosure or review of the individual's personal information record, the insurance institution, agent, or support organization must identify clearly the matters in dispute and include the supplementary statement with the disclosed personal record.⁷⁸ Moreover, the supplementary statement, or the corrected, amended, or deleted section of personal information, must be furnished to any person, specifically designated by the individual, who has received the individual's recorded personal information within the preceding two years.⁷⁹ Also, this information must be furnished to any insurance-support organization whose primary source of information is insurance institutions, so long as the insurance-support organization systematically has received such recorded personal information from the concerned insurance institution within the preceding seven years and continues to maintain a record concerning the individual.⁸⁰

Chapter 1214 provides that both the right of access to personal information and the right to request correction, amendment, or deletion of that information, extends to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent, or support organization.⁸¹ Information relating to, or collected in connection with, a claim or civil or criminal proceeding, however, is not accessible or disputable.⁸²

74. See CAL. INS. CODE §791.09.

75. See *id.* §791.09(a)(1), (2)(A), (B).

76. See *id.* §791.09(a)(2)(C), (c).

77. See *id.* §791.09(d)(1).

78. See *id.* §791.09(d).

79. See *id.* §791.09(b)(1), (d)(3).

80. See *id.* §791.09(b)(2), (d)(3).

81. See *id.* §§791.08(f), 791.09(e).

82. See *id.*

Disclosure of Personal Information

Chapter 1214 attempts to protect the confidentiality of an individual's personal records maintained by insurance institutions, agents, and support organizations by delineating the circumstances under which disclosure of personal information will be allowed.⁸³ Disclosure generally is permitted if it is with the written authorization of the individual,⁸⁴ provided the authorization (1) is in plain language, (2) is dated, (3) specifies the nature of the information authorized to be disclosed, (4) delineates the types of persons authorized to receive the information, and (5) is valid for a period of time not greater than one year.⁸⁵ Moreover, if the authorization is obtained by a person other than an insurance institution, agent, or support organization, the authorization must be dated and signed by the individual and must have been obtained no more than one year prior to the date disclosure is sought.⁸⁶ The other circumstances in which disclosure is permitted by Chapter 1214 may be grouped into three categories: (1) disclosures the insurance institution, agent, or support organization must make in the performance of business functions inherent in the insurance field or to protect itself when the individual is suspected of fraud;⁸⁷ (2) disclosure to a medical professional to inform the individual of a possible medical problem;⁸⁸ and (3) disclosures to government authorities.⁸⁹

Some of the permitted disclosure provisions that seem likely to be used most frequently are those relating to the business functions of the insurance institution, agent, or support organization.⁹⁰ For example, disclosure is permitted to a person other than an insurance institution, agent, or support organization to enable that person to perform a business, professional, or insurance function for the disclosing institution, agent, or support organization.⁹¹ The information disclosed, however, must be reasonably necessary for the recipient to perform his or her function,⁹² and the recipient must agree not to disclose the information without the individual's written authorization unless the disclosure would otherwise be permitted by Chapter 1214.⁹³ Similarly, another provision permits disclosure to an insurance institution, agent, or sup-

83. *See id.* §791.13; *NAIC Description*, *supra* note 4, at 349-50.

84. *See* CAL. INS. CODE §791.13(a).

85. *See id.* §791.13(a)(1)(A), (B). *See also id.* §791.06(a), (b), (d), (e).

86. *See id.* §791.13(a)(2)(A), (B), (C).

87. *See id.* §791.13(b), (c), (i), (j), (k), (l), (m).

88. *See id.* §791.13(d).

89. *See id.* §791.13(e), (f), (g), (h).

90. *See generally NAIC Description*, *supra* note 4, at 349-52.

91. *See* CAL. INS. CODE §791.13(b).

92. *See id.* §791.13(b)(1).

93. *See id.* §791.13(b)(2).

port organization either for the purpose of detecting fraud, material misrepresentation, or material nondisclosure⁹⁴ or for purposes of performing a function in connection with an insurance transaction concerning the individual.⁹⁵ Again, the information disclosed must be limited to information reasonably necessary for the purpose.⁹⁶ In addition, disclosure is permitted for the purpose of marketing research⁹⁷ or scientific studies, including underwriting studies and financial audits,⁹⁸ although Chapter 1214 severely restricts the use of these disclosures.⁹⁹ These limitations are indicative of the balance between the legitimate needs of the insurance business and the individual's informational privacy that Chapter 1214 attempts to preserve.¹⁰⁰

Adverse Underwriting Decisions

Prior to the enactment of Chapter 1214, an insurance institution or agent was required to inform an individual proposed for coverage of the specific reasons for an adverse underwriting decision in only a few situations.¹⁰¹ Chapter 1214 now *always* requires the insurance institution or agent responsible for the adverse decision to provide the applicant, policyholder, or individual proposed for coverage with the specific reasons for the decision in writing or to advise the person that the reasons will be provided in writing upon request.¹⁰² This requirement is consistent with the purpose of the legislature in enabling applicants and policyholders to obtain the reasons for any adverse underwriting decision so that they may verify the accuracy of the information upon which the decision was based.¹⁰³ The insurance institution or agent also must inform the individual of the right to see, correct, amend, or delete disputed sections of the record and to file a supplementary statement.¹⁰⁴ If the adverse underwriting decision resulted from an oral request for insurance coverage, the explanation of the reasons for the decision and the summary of rights also may be oral to the extent the information is available.¹⁰⁵

94. *See id.* §791.13(c)(1).

95. *See id.* §791.13(c)(2).

96. *See id.* §791.13(c).

97. *See id.* §791.13(k).

98. *See id.* §791.13(i).

99. *See, e.g., id.* §791.13(i)(1), (2), (k)(1)(A), (B), (C).

100. *See id.* §791; *NAIC Description*, *supra* note 4, at 350-52.

101. *See* 15 U.S.C. §1681m(a) (1976); CAL. CIV. CODE §1784.40; *NAIC Description*, *supra* note 4, at 346. *See generally* CAL. INS. CODE §791.02(a) (definition of adverse underwriting decision).

102. *See* CAL. INS. CODE §791.10(a)(1).

103. *See id.* §791; *NAIC Description*, *supra* note 4, at 346-48.

104. *See* CAL. INS. CODE §791.10(a)(2). *See generally id.* §§791.08, 791.09, 791.10(b).

105. *See id.* §791.10(d).

When an insurance institution or agent receives a written request for the specific reasons for an adverse underwriting decision within 90 business days from the date of the mailing of notice or other communication of the decision to the applicant or policyholder, the institution or agent must furnish the following information within 21 business days:¹⁰⁶ (1) the specific reasons for the decision;¹⁰⁷ (2) the specific items of personal or privileged information that support those reasons;¹⁰⁸ and (3) the names and addresses of the institutional sources that supplied the items of information.¹⁰⁹ Specific items of medical record information supplied initially by a medical care institution or medical professional, however, may be disclosed either directly to the individual or to a medical professional chosen by the individual who is licensed to provide medical care with respect to the condition discussed in the information, whichever the insurance institution or agent prefers.¹¹⁰ Moreover, if the individual is suspected of fraud, material misrepresentation, or material nondisclosure, the insurance institution or agent need not furnish specific items of privileged information.¹¹¹

Chapter 1214 also provides that no insurance institution or agent may base an adverse underwriting decision solely on the basis of either (1) a previous adverse underwriting decision, (2) previous insurance coverage through a residual market mechanism, or (3) personal information received from an insurance-support organization whose primary source of information is insurance institutions.¹¹² Insurance institutions and agents, however, may base an adverse underwriting decision on further information¹¹³ received from the insurance institution or agent responsible for the previous adverse underwriting decision.¹¹⁴ As mentioned above, insurance institutions and agents may request information from an individual on previous adverse decisions or coverage through a residual market mechanism only if they also request the reasons for the decision or coverage.¹¹⁵

106. *See id.* §791.10(b).

107. *See id.* §791.10(b)(1).

108. *See id.* §791.10(b)(2).

109. *See id.* §791.10(b)(3).

110. *See id.* §791.10(b)(2)(B).

111. *See id.* §791.10(b)(2)(A).

112. *See id.* §791.12.

113. Further information may be additional information received from the responsible institution or agent, but if the personal information was originally received from a support organization, a statement must be included by the insurance institution that its underwriting file contains the source of the information, that the information is either medical record information or personal information supplied by the individual, and that the insurance institution confirms the accuracy of the information. *See* CAL. INS. CODE §791.12(b). *See generally* NAIC Description, *supra* note 4, at 348-49.

114. *See* CAL. INS. CODE §791.12(a), (b). *See generally* NAIC Description, *supra* note 4, at 349.

115. *See* CAL. INS. CODE §791.11.

Immunity, Penalties, and Enforcement

Existing law provides that in an action for libel, an insurer has a qualified privilege to record personal information and maintain insurance files.¹¹⁶ Chapter 1214 continues to provide that no cause of action will arise against any person for disclosing or receiving personal or privileged information in good faith.¹¹⁷ No immunity is provided, however, for a disclosure of information that is either (1) known to be false, (2) made with malice, (3) disclosed in a negligent manner, or (4) disclosed with a willful intent to injure any person.¹¹⁸ When no immunity exists, liability will be limited to compensatory damages, punitive damages of no more than \$3000, attorney's fees of not more than \$1000, and the cost of litigation.¹¹⁹

Chapter 1214 provides that the insurance commission¹²⁰ has the power to investigate the affairs of every insurance institution, agent, or support organization to determine whether there have been any violations of the Insurance Information and Privacy Protection Act.¹²¹ When the commissioner has reason to believe that there has been a violation, the commissioner must serve a statement of charges and notice of hearing on the insurance institution, agent, or support organization involved.¹²² At the hearing, which must be held not less than 30 days after the date of service,¹²³ the commissioner may administer oaths, examine witnesses, receive evidence, subpoena witnesses, and require the production of relevant documents.¹²⁴ Moreover, the commissioner must permit adversely affected persons to intervene at the hearing when good cause is shown and must allow an insurance institution, agent, or support organization an opportunity to answer the charges and present evidence on its behalf.¹²⁵

Chapter 1214 provides that process for these hearings may be served by anyone duly authorized to act on behalf of the commissioner.¹²⁶ Service may be completed by registered mail or in the manner provided

116. *See* *Mayer v. Northern Life Ins. Co.*, 119 F. Supp. 536, 536 (N.D. Cal. 1953); CAL. CIV. CODE §47(3).

117. *See* CAL. INS. CODE §791.21.

118. *See id.*

119. *See id.*

120. *See id.* §791.02(x) (definition of commissioner). *See generally id.* §§12900-12977.

121. *See id.* §791.14.

122. *See id.* §791.15(a).

123. *See id.*

124. *See id.* §791.15(c) (hearing governed by same rules of evidence and procedure applicable to administrative proceedings).

125. *See id.* §791.15(b).

126. *See id.* §791.15(d).

by law for service in civil actions,¹²⁷ and a copy of the process must be provided to the person whose rights allegedly have been violated.¹²⁸ Also, Chapter 1214 provides that an insurance-support organization transacting business outside California that has an effect on a California resident is deemed to have appointed the commissioner to accept service so long as a copy of the service is sent by registered mail, return receipt requested, to the support organization.¹²⁹

The commissioner's findings of fact and conclusions of law must be prepared in a written report after the hearing and a copy of the report must be served on the insurance institution, agent, or support organization and on the persons whose rights allegedly were violated.¹³⁰ If the commissioner determines that there were violations of the Act, a cease and desist order also must be issued.¹³¹ The commissioner may modify or set aside any order or report until the time allowed for filing a petition for review expires or a petition is actually filed.¹³² After the expiration of the time allowed for filing a petition, and if no petition has been filed, the commissioner still may alter, modify, or set aside, in whole or in part, any order or report provided there has been notice and opportunity for hearing and the action either is warranted by conditions of fact or law or required in the public interest.¹³³ Any person subject to an order of the commissioner, or any person whose rights under this Act allegedly were violated, may obtain judicial review of an order or report of the commissioner by filing a petition in a court of competent jurisdiction within 30 days from the date of the service of the commissioner's order or report.¹³⁴ When the commissioner has not modified or set aside the order or report,¹³⁵ it will become final upon the expiration of time allowed for filing a petition for review, or upon a final decision of the court that either affirms the order or report or dismisses the petition for review.¹³⁶ Chapter 1214, however, expressly provides that no order or report of the commissioner, or order of a court to enforce an order of the commissioner, will absolve or relieve a person of liability that may exist under any other provision of law.¹³⁷

127. *See id.* *See also* CAL. CIV. PROC. CODE §§413.10-417.40 (rules governing service of process, manner of service, proof of service, and service by whom and upon whom).

128. *See* CAL. INS. CODE §791.15(d).

129. *See id.* §791.16.

130. *See id.* §791.17(a), (b).

131. *See id.* §791.17(a).

132. *See id.* §791.17(c).

133. *See id.*

134. *See id.* §791.18(a). *See generally* CAL. CIV. PROC. CODE §1094.5 (provides for review of administrative orders or decisions).

135. *See* CAL. INS. CODE §791.18(b)(1).

136. *See id.* §791.18(b)(1), (2).

137. *See id.* §791.18(c).

Any person who violates a cease and desist order may be subject to various penalties at the discretion of the commissioner.¹³⁸ The commissioner, however, may not order a fine of more than \$10,000 for each violation or \$50,000 for frequent violations that seem to constitute a general business practice.¹³⁹ Suspension or revocation of the license of an insurance institution or agent is allowed only if the institution or agent knew or reasonably should have known of the violation.¹⁴⁰ In addition, any person who knowingly and willfully obtains information about an individual from an insurance institution, agent, or support organization under false pretenses may be fined up to \$10,000, imprisoned for not more than one year, or both.¹⁴¹

Chapter 1214 also provides that a person may apply to any court of competent jurisdiction for appropriate equitable relief if an insurance institution, agent, or support organization fails to comply with the person's right of access to information, right to dispute information records, or right to receive the reasons for any adverse underwriting decision.¹⁴² If the court determines that the violation was without reasonable cause, costs and reasonable attorney's fees may be added to the equitable relief.¹⁴³ Frivolous actions, however, may be penalized by awarding costs and attorney's fees to the insurance institution, agent, or support organization.¹⁴⁴

Miscellaneous

Chapter 1214 will not apply to any person or entity engaged in the business of title insurance.¹⁴⁵ Home protection companies that do not obtain or maintain personal information on its policyholders and applicants also are excepted from compliance with these regulations.¹⁴⁶

The obligations imposed by Chapter 1214 regarding the individual's right of access to information records,¹⁴⁷ the right to dispute information in those records,¹⁴⁸ and the duty of the insurance institution, agent, or support organization to restrict disclosures¹⁴⁹ will take effect on July 1, 1981, regardless of the date of the collection or receipt of the infor-

138. *See id.* §791.19.

139. *See id.* §791.19(a), (b).

140. *See id.* §791.19(c).

141. *See id.* §791.22.

142. *See id.* §791.20. *See generally id.* §§791.08, 791.09, 791.10.

143. *See id.* §791.20.

144. *See id.*

145. *See id.* §§791.01(d), 12340.3 (definition of the business of title insurance).

146. *See id.* §§791.01(e), 12740(b) (definition of home protection company).

147. *See id.* §791.08.

148. *See id.* §791.09.

149. *See id.* §791.13.

mation.¹⁵⁰ Chapter 1214, in its entirety, will remain in effect only until January 1, 1989, unless a later enacted statute amends or deletes this date.¹⁵¹

Conclusion

In an apparent response to the perceived threat to privacy posed by the compiling of vast quantities of personal information in computerized information systems,¹⁵² Chapter 1214 enacts the Insurance Information and Privacy Protection Act.¹⁵³ This Act establishes standards for the collection, use, and disclosure of information gathered in connection with insurance transactions.¹⁵⁴ Furthermore, natural persons are provided with a means of ascertaining what information is on record with an insurance institution, agent, or support organization¹⁵⁵ and may correct, amend, delete, or file a supplementary statement concerning disputed information.¹⁵⁶ Insurance applicants and policyholders also are protected from adverse underwriting decisions being made on the basis of incomplete or inaccurate information since individuals now are able to obtain the reasons for these decisions.¹⁵⁷ In addition, unauthorized disclosure of personal or privileged information is regulated.¹⁵⁸ Finally, Chapter 1214 provides remedies for violations of any right or obligation established by the Insurance Information and Privacy Act.¹⁵⁹

150. *See id.* §791.23.

151. *See* CAL. STATS. 1980, c. 1214, §2, at —.

152. *See NAIC Description, supra* note 4, at 336.

153. *See* CAL. INS. CODE §§791-791.26.

154. *See id.* §§791, 791.03-791.07.

155. *See id.* §791.08.

156. *See id.* §791.09.

157. *See id.* §§791.10-791.12.

158. *See id.* §791.13.

159. *See id.* §§791.14-791.22.

Insurance; investment

Insurance Code §1191.1 (new); §§1100, 1105, 1176, 1180 (amended).

SB 2005 (Foran); STATS 1980, Ch 811

(*Effective July 28, 1980*)

Support: Department of Insurance

SB 2006 (Foran); STATS 1980, Ch 812

Support: Business and Transportation Agency

Opposition: Department of Insurance

SB 2009 (Foran); STATS 1980, Ch 463

Support: Business and Transportation Agency

Opposition: Department of Insurance
 SB 2010 (Foran); STATS 1980, Ch 814
 Support: Business and Transportation Agency
 Opposition: Department of Insurance

Existing law divides insurance company assets into the categories of realty,¹ general investments,² excess fund investments,³ and leeway law investments.⁴ Chapters 463, 811, 812, and 814 increase the number of allowable investments that an insurer may make under these provisions.⁵ Chapters 463 and 811 modify this law to allow a greater range of general investments in residential property and mortgage-backed loans.⁶ In addition, Chapter 814 permits the insurer⁷ to use excess funds to invest in traded call options of common stock⁸ and Chapter 812 allows insurance companies to provide funds for the purchase of a principal residence by an officer or other employee authorized to manage the funds of the insurer.⁹

First, Chapter 463 increases the maximum loan an insurance company can make for the purchase of real property.¹⁰ Prior to the enactment of Chapter 463, an insurer was allowed to invest in notes or bonds secured by an unencumbered first lien or mortgage if (1) no condition, right of re-entry, or right of forfeiture existed and (2) the principal loaned did not exceed 75 percent of the market value of the property at the date of the investment.¹¹ Chapter 463 increases the amount of principal that may be loaned from 75 percent of the market value to 80 percent of the market value of the real property.¹² In addition, Chapter 463 provides that if the property involved is (1) primarily improved with a residential building, including a condominium unit, (2) secured by a first mortgage or other first lien, and (3) the terms of the loan provide for monthly payments of principal and interest sufficient to effect full repayment of the loan within the remaining useful life of the building or 40 years, whichever is less, the investment

1. See generally CAL. INS. CODE §§1150-1155.

2. See generally *id.* §§1170-1182.

3. See generally *id.* §§1190-1202.

4. See generally *id.* §1210.

5. See *id.* §§1100, 1105, 1176, 1180, 1191.1.

6. See *id.* §§1100, 1176, 1180.

7. See *id.* §23 (definition of insurer).

8. See *id.* §1191.1.

9. See *id.* §1105(g).

10. Compare *id.* §1176(b)(1), (2), (3) with CAL. STATS. 1975, c. 781, §1, at 1803 (amending CAL. INS. CODE §1176).

11. See CAL. STATS. 1975, c. 781, §1, at 1803.

12. Compare CAL. INS. CODE §1176(b)(1), (2), (3) with CAL. STATS. 1975, c. 781, §1, at 1803.

may be for as much as 90 percent of the market value.¹³

Chapter 811 makes a second change with respect to general investments by expanding the definition of acceptable mortgages available for investment.¹⁴ Prior to Chapter 811, an insurer apparently could not invest in a pool of loans unless the insurer had the *entire* interest.¹⁵ Moreover, investment in bonds was restricted to bonds issued under the Federal Home Loan Bank Act or the Home Owners' Loan Act of 1933.¹⁶ Under Chapter 811, any insurer, except an insurer transacting mortgage guaranty insurance,¹⁷ may invest in, purchase, or hold a mortgage, mortgage participation,¹⁸ pass-through, conventional pass-through, or trust certificate¹⁹ that represents an undivided beneficial interest in a pool of loans secured by a first lien on real property improved by a residential building or condominium unit.²⁰ Furthermore, an insurer may now invest in securities issued or guaranteed by the Federal Home Loan Mortgage Corporation,²¹ Government National Mortgage Corporation,²² or the Federal National Mortgage Association.²³

Another investment-related change is made by Chapter 814.²⁴ Existing law provides that an insurer may invest excess funds²⁵ in specified loans and securities.²⁶ Chapter 814 also allows an insurer to sell, through a stock exchange only, traded call options of common stock owned by the insurer.²⁷ The insurer may also purchase traded call options but only through an exchange and only for the purpose of a closing purchase transaction.²⁸

Furthermore, existing law provides that an insurer is prohibited from making any loan, other than a policy loan, to any officer or other person having the authority to manage the funds of the insurer.²⁹ Chapter

13. See CAL. INS. CODE §1176(b)(4).

14. Compare *id.* §§1100, 1180 with CAL. STATS. 1974, c. 942, §1, at 1964 (amending CAL. INS. CODE §1100) and CAL. STATS. 1937, c. 738, §7, at 2050 (enacting CAL. INS. CODE §1180). See generally CAL. INS. CODE §29 (definition of mortgage, mortgagor, mortgagee, and lien).

15. See CAL. STATS. 1974, c. 942, §1, at 1964 (amending CAL. INS. CODE §1100).

16. See CAL. STATS. 1937, c. 738, §7, at 2050 (enacting CAL. INS. CODE §1180). See generally 12 U.S.C. §§1421-1449, 1461-1470 (1976).

17. See CAL. INS. CODE §119 (definition of mortgage guaranty insurance).

18. See *id.* §12424 (definition of mortgage participation certificate).

19. See CAL. FIN. CODE §1565 (definition of trust participation).

20. See CAL. INS. CODE §1100.

21. See *id.* §1180. See generally 12 U.S.C. §§1454, 1455 (1976).

22. See CAL. INS. CODE §1180. See generally 12 U.S.C. §§1721, 1723(e) (1976).

23. See CAL. INS. CODE §1180. See generally 12 U.S.C. §§1717-1719 (1976).

24. See generally CAL. INS. CODE §1191.1.

25. See generally *id.* §1190 (definition of excess funds investments).

26. See *id.* §§1190-1202.

27. See *id.* §1191.1.

28. See *id.*

29. See *id.* §1104.

812, however, permits an insurer to make a loan to an officer or other person authorized in the management of the insurer's funds for the purpose of buying a principal residence in connection with a relocation made at the request of the insurer.³⁰ The residence must not be purchased at a price exceeding the fair market value of the property.³¹ Moreover, the loan must be secured by a first trust deed or first mortgage and must not exceed 90 percent of the fair market value of the property.³² In addition, the interest rate of the loan must not be more favorable than the rate given to other employees of the insurer.³³ A loan made pursuant to Chapter 812, however, is subject to approval by the insurer's board of directors or a committee delegated by the board and is not available to directors and trustees of insurers.³⁴

In summary, Chapters 463, 811, 812, and 814 increase the number of investments an insurer is allowed to make.³⁵ Chapters 463 and 811 allow a greater range of general investments in residential property and mortgage-backed loans³⁶ and Chapter 814 allows excess funds to be used to invest in traded call options.³⁷ Finally, Chapter 812 permits insurers to provide funds for the purchase of a principal residence by an officer or other employee authorized to manage the funds of the insurer.³⁸

30. *See id.* §1105(g).

31. *See id.*

32. *See id.*

33. *See id.*

34. *See id.*

35. *See generally id.* §§1100, 1105, 1176, 1180, 1191.1.

36. *See generally id.* §§1100, 1176, 1180.

37. *See generally id.* §1191.1.

38. *See generally id.* §1105(g).

